

of U.S. Patent No. 5,689,895 to Sutherland et al. Claims 19-32, 36-43, 49-56, 60, and 61 were finally rejected under 35 U.S.C. 112, first paragraph, because allegedly these claims contain "subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention." Claims 6-8, 12, 15, 33-35, and 45-48 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 57-59 have been allowed by the Examiner. Applicants have not cancelled or amended any claims, as it is believed that all claims as written are patentably distinguishable over the applied references.

Applicants respectfully submit that independent Claim 1 stands patentably distinguishable over the applied reference to Rits (i.e., U.S. Patent No. 4,095,356). As previously mentioned in the responsive communication of April 21, 2003 Claim 1 claims that the second filter member is *disposed juxtaposedly* to the first filter member. The membrane 22 in U.S. Patent No. 4,095,356 to Rits is *not disposed juxtaposed* to membrane 26. As further previously mentioned in the responsive communication of April 21, 2003, Webster's Universal Encyclopedic Dictionary, published by Barnes and Noble Books in 2002 (ISBN 0-7607-2911-5), defines juxtaposed as: "to place side by side", or "adjacent" which means or is defined as "having a common end point or border.....immediately preceding or following."

*6. OTHER DEFINITION
ADJACENT
-NEARBY,
BUT NOT ADJ.*

It is axiomatic that a claim must be read in accordance with the precepts of English grammar. *In re Hyatt*, 708 F. 2d 712, 218 USPQ 195 (Fed. Cir. 1983). Words will be given their ordinary and accustomed meaning unless it appears that the Applicants used them differently. *Envirotech Corp. v. Al George, Inc.*, 730 F.2d 753, 221 USPQ 473 (Fed. Cir. 1984). Applicants have used "juxtaposedly" in accordance with the precepts of English Grammar, and have not used "juxtaposedly" otherwise, meaning that the first filter member has a common point with the second filter member and it immediately precedes or follows the second filter member, as shown in the patent drawings. Membranes 22 and 26 in Rits are not "disposed juxtaposedly" as claimed by Applicants in Claim 1. More specifically, membrane 22 in Rits is not side by side to membrane 26, nor is membrane 22 adjacent to membrane 26 because it does not have a common end point or border, nor does it immediately precede or follow membrane 26. As shown in the drawing of Rits, membrane 22 is separated from membrane 26 by an absorbing intermediate material identified in Rits as "24". Thus, Applicants' independent Claim 1 stands patentably distinct over the applied reference to Rits.

With respect to the Examiner's contention that because one of Rits' permeable membranes "has a smaller pore size and is of finer construction and thus more flexible," it is respectfully submitted that flexibility depends on the material and not pore size *per se*. *Query?* Which would be more flexible, a rubber member with certain pore sizes or a steel member with smaller pore sizes than the rubber membrane? As previously indicated in the responsive communication of April 21, 2003, Col. 2, lines 54-58 of

*unfurnished
reinforced
as above mentioned
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Rits (i.e., "....the lower gas permeable membrane 22 has a pore size in the range of.....to about 1 mm.") does NOT teach (as the Examiner is alleging) that the "first filter member has a higher flexibility than the second filter member" as claimed by Applicants in dependent Claims 5, 21, 32 and 44. Both membrane 22 and membrane 26 in Rits may have the *same* flexibility. Thus, because Rits does not specifically teach or suggest membranes 22 and 26 having any particular flexibility with respect to each other, dependent Claims 5, 21, 32 and 44 are patentably distinguishable over Rits.

PVDF
PTFE

perforated
nylon

As previously indicated above, the Examiner has rejected Claims 19-32, 36-43, 49-56, 60, 61 under 35 U.S.C. Section 112, first paragraph, alleging and/or contending that Claims 19-32, 36-43, 49-56, 60, 61 contain new matter; that is, to quote the Examiner, "the claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention." The Examiner is more specifically alleging and/or contending that: (i) Claims 19-32, 36-43, 49-56, 60, 61 refer to the contacting of the flexed structure with the membrane or filters contacting which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention;" (ii) "Claims 26, 36-41, 43, 50, 56 refer to no absorbing material positioned between the first and second filter members which was not described in the specification in such a way as to reasonably convey to one

skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention;" and (iii) "Claims 51-55 refer to moving the second filter toward the first filter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention."

It is well known in patent law that an amendment which conforms the written specification to the original drawing or claims, or that clarifies something inherent in the original disclosure does NOT introduce new matter. If the additional matter added in an amendment was inherently contained in the original application as filed, it is NOT new matter. *Litton Sys., Inc. v. Whirlpool Corp.*, 728 F.2d 1423, 221 USPQ 97 (Fed. Cir. 1984). If the essence of the original disclosure supports the new claim limitation, the new limitation is NOT new matter. *In re Wright*, 866 F.2d 422, 9 USPQ2d 1649 (Fed. Cir. 1989)

As previously mentioned in the responsive communication of April 21, 2003, independent Claims 19, 30, 37, and 51 respectively contain the following claimed matter, which the Examiner has alleged is new matter: (i) ".....a second filter.....having the capability of being contacted by the first filter member when the first filter member is flexed" (as claimed in independent Claim 19); (ii) ".....a first filter member disposed over the opening and having a flexed structure...." (as claimed in independent Claim 30); (iii) ".....and having no absorbing material positioned between the first and second

filter members" (as claimed in independent Claim 37); and (iv) ".....moving the second filter towards the first filter member" (as claimed in independent Claim 51).

The foregoing claimed matter is supported by the essence of the original disclosure, or is inherently contained in the original application. The specification (see page 8, lines 20-23) as filed states: "Filter 36 is preferably a support membrane type filter which increases the structural rigidity of the combination of the superimposed filters 34 and 36. In operation, filter 34 would typically move or flex toward and/or against filter 36. Preferably, filter 34 has a higher flexibility than filter 36." The Examiner is respectfully directed to Figures 6 and 7 of the drawings which illustrates filters 34 and 36 either touching or in very close proximity to each other such that one of the filters may move or flex against the other filter.

Clearly, the words ".....filter 34 would typically move or flex toward and/or against filter 36," especially in combination with Figures 6 and 7 of the drawings, support a finding of fact that: (i) the second filter 36 has the capability of being contacted by the first filter 34 when the first filter member is flexed (as claimed in independent Claim 19); (ii) the first filter 34 is disposed over the opening and has a flexed structure (as claimed in independent Claim 30); (iii) no absorbing material is positioned between the first and second filters 34 and 36 (as claimed in independent Claim 37); and (iv) moving one of the filters towards the other filter (as claimed in independent Claim 51). Thus, the matter that the Examiner

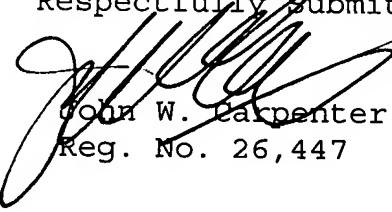
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has alleged as new matter in independent Claims 19, 30, 37, and 51 is not new matter, because the matter is supported by the essence of the original disclosure, or is inherently contained in the original application.

Therefore, it is respectfully requested that the rejection of independent Claims 19, 30, 37, and 51, as well as all claims depending on independent Claims 19, 30, 37, and 51, be withdrawn. Applicants respectfully submit that independent Claims 19, 30, 37, and 51, as well as all claims depending on these independent Claims, are in condition for allowance.

All Claims are now in condition for allowance and an early notice of same is respectfully solicited.

Respectfully Submitted



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